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International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the second periodic report of Kyrgyzstan*

1. The Committee considered the second periodic report submitted by Kyrgyzstan (CCPR/C/C/KGZ/2) at its 3038th and 3039th meetings (CCPR/C/SR.3038 and 3039), held on 10 and 11 March 2014. At its 3060th meeting (CCPR/C/SR.3060), held on 25 March 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Kyrgyzstan and the information presented therein, although the report was due since 2004. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken by the State party during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/KGZ/Q/2/Add.1) to the list of issues, submitted in one of the State party's official languages, together with a translation into a working language of the Committee, which were supplemented by the oral responses provided by the delegation during the dialogue and the additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) Adoption of Act No. 91 of 25 June 2007, providing for the abolition of the death penalty;

(b) Adoption of the Constitution on 27 June 2010, which contains provisions on the protection of human rights, including the rights stipulated in the Covenant, and on the implementation of findings of international human rights bodies (art. 41 (2) of the Constitution);

* Adopted by the Committee at its 110th session (10–28 March 2014).

(c) Establishment of the Human Rights Coordination Council further to the Government resolution of 18 November 2013, mandated to enforce implementation of international human rights obligations.

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 6 December 2010;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 22 July 2002;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 12 February 2003, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 13 August 2003;

(d) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 29 September 2003;

(e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, on 29 December 2008.

C. Principal matters of concern and recommendations

Applicability of the Covenant in domestic courts

5. The Committee notes that according to article 6 (3) of the Constitution of the Kyrgyz Republic, international human rights treaties are part of the domestic law. However, it regrets the lack of evidence that domestic courts apply the provisions of the Covenant (art. 2).

The State party should take appropriate measures to raise awareness among judges, lawyers and prosecutors about the Covenant and the direct applicability of its provisions in domestic law, so as to ensure that they are taken into account before domestic courts. The State party should include detailed examples of the application of the Covenant by the domestic courts in its next periodic report.

Implementation of the Views of the Committee

6. While welcoming article 41 (2) of the State party's Constitution, which stipulates the obligation to take measures to restore victims' rights and provide compensation in cases where violations are found by international treaty bodies, the Committee is concerned about the failure to implement the Views adopted by the Committee in relation to the State party, and about allegations that asylum seekers continue to be returned to their home countries notwithstanding the Committee's Views on the matter. Despite the information provided during the dialogue, the Committee regrets the lack of clarity on the role of the newly established Human Rights Coordination Council with respect to the implementation of the Committee's Views (art. 2).

The State party should take all necessary measures to ensure the full implementation of the Views adopted by the Committee in relation to the State party. The Human Rights Coordination Council should also be mandated with monitoring the implementation of the Committee's Views and should address this issue as a matter of urgency.

National human rights institution

7. The Committee is concerned about the insufficient guarantees of independence of the Office of the Ombudsman (*Akyikatchy*). The Committee welcomes the State party's efforts to amend the Law on the Ombudsman to ensure its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) (art. 2).

The State party should expeditiously bring the mandate of the Ombudsman (*Akyikatchy*) into full compliance with the Paris Principles and provide it with the necessary financial and human resources to ensure that it can effectively and independently implement its mandate.

Non-discrimination and equality

8. The Committee remains concerned about a lack of comprehensive anti-discrimination legislation prohibiting discrimination on grounds such as race, language, disability and ethnic origin, and about the lack of disciplinary sanctions for State officials acting in a discriminatory manner (arts. 2 and 26).

The State party should review its domestic legislation and bring it into line with the principle of non-discrimination to ensure that it includes a comprehensive prohibition of discrimination on all the grounds set out in the Covenant. The State party should also ensure that reliable and public data is systematically collected on cases of discrimination and their treatment by the competent judicial authorities.

9. The Committee is concerned about reports of violence against lesbian, gay, bisexual and transgender (LGBT) persons by both State and non-State actors, and the failure on the part of the State party to address such violence (arts. 2 and 26).

The State party should ensure that violence against LGBT persons is thoroughly investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims are adequately compensated and protected against reprisals.

State of emergency

10. The Committee regrets the lack of information on the progress made to review the legislation governing states of emergency to bring it into compliance with article 4 of the Covenant, in particular concerning the power of derogation from specific Covenant provisions (CCPR/CO/69/KGZ, para. 12). The Committee is concerned about reports that the state of emergency imposed in 2010 did not complying with the safeguards of article 4 of the Covenant, including failure to take measures to protect certain non-derogable rights, such as the right to life and prohibition of torture (arts. 4, 6 and 7).

The State party should ensure that its legislation on states of emergency and application thereof are fully compatible with the provisions of article 4 of the Covenant.

Violence against women

11. While welcoming the adoption of measures to combat violence against women, the Committee notes with regret continuing reports of acts of violence against women, including bride kidnapping, spousal rape and domestic violence. The Committee is concerned that violence against women remain underreported and that domestic violence is accepted by the society at large (arts. 2, 3 and 7).

The State party should adopt a comprehensive approach to prevent and address all forms of violence against women, including bride kidnapping, spousal rape and domestic violence and:

(a) Reinforce training of police on preventing and combating violence against women, especially bride kidnapping, spousal rape and other acts of domestic violence;

(b) Guarantee that cases of violence against women are thoroughly investigated, that the perpetrators are brought to justice and, if convicted, punished with commensurate sanctions, and that victims are adequately compensated;

(c) Ensure the availability of a sufficient number of adequately resourced shelters;

(d) Launch awareness-raising campaigns among men and women on the adverse impact of violence on women.

Trafficking in persons

12. The Committee is concerned that the State party still lacks proper identification and referral mechanisms for victims of trafficking in persons and that the law enforcement authorities and other officials lack capacity with regard to working with victims. The Committee is also concerned about allegations of trafficking in newborns and lack of regulation concerning adoption (arts. 3, 8 and 24).

The State party should continue its efforts to prevent and eradicate trafficking in persons, including by effectively implementing the relevant legislation and harmonizing the child adoption legislation with the requirements of international law. It should also establish proper mechanisms for identifying victims of trafficking and referring them to appropriate services, and continue training law enforcement officials and other relevant professionals on identification and assistance to victims of trafficking.

Anti-terrorism measures

13. The Committee regrets the lack of information on the content and application of the State party's legislation to combat terrorism. The Committee is concerned at reports of excessive use of lethal force during special operations and failure on the part of the State party to provide information on the applicable legal rules restricting the use of lethal force to a strictly necessary extent (art. 6).

The State party should ensure, as a matter of urgency that its anti-terrorism legislation and its application thereof, especially the use of force, is in conformity with the provisions of the Covenant, particularly with respect to the right to life. The State party should promptly investigate allegations of excessive use of force by the special services, prosecute perpetrators and provide compensation to victims' families.

Inter-ethnic violence

14. While noting information provided during the dialogue, the Committee is concerned about reports concerning failure on the part of the State party to investigate fully, effectively and without discrimination, human rights violations committed during and in the aftermath of the June 2010 ethnic conflict in the south of Kyrgyzstan, including allegations of torture and ill-treatment, serious breaches of fair trial standards during court proceedings, including attacks on lawyers defending ethnic Uzbeks, and discrimination in access to justice based on ethnicity. The Committee is also concerned that the causes of this conflict

were not fully addressed by the State party and may continue to persist (art. 2, 7, 9, 14, 26 and 27).

The State party should take effective measures to ensure that all alleged human rights violations related to the 2010 ethnic conflict are fully and impartially investigated, that those responsible are prosecuted, and that victims are compensated without any discrimination based on ethnicity. The State party should urgently strengthen its efforts to address the root causes of obstacles to the peaceful coexistence between different ethnic groups on its territory and to promote ethnic tolerance and mutual trust.

Torture and ill-treatment

15. While welcoming legislative and administrative measures aimed at the prevention and eradication of torture, including amendments to the Criminal Code, the Committee remains concerned about the ongoing and widespread practice of torture and ill-treatment of persons deprived of their liberty for the purpose of extracting confessions, particularly in police custody; the number of deaths in custody and the fact that none of the cases reported to the Committee led to any conviction; the State party's failure to conduct prompt, impartial and full investigation of deaths in custody; and the lack of prosecution and punishment of perpetrators of torture and ill-treatment and compensation of victims. The Committee also remains concerned about allegations of torture and miscarriages of justice in the case of Azimjan Askharov (arts. 6, 7 and 10).

The State party should urgently strengthen its efforts to take measures to prevent acts of torture and ill-treatment and ensure prompt and impartial investigation of complaints of torture or ill-treatment, including the case of Azimjan Askarov; initiate criminal proceedings against perpetrators; impose appropriate sentences on those convicted and provide compensation for victims. The State party should take measures to ensure that no evidence obtained through torture is allowed to be used in court. The State party should also expedite operationalization of the National Centre for the Prevention of Torture through providing the necessary resources to enable it to fulfil its mandate independently and effectively.

Liberty and security of person

16. The Committee is concerned about the lack of implementation of basic safeguards to all persons deprived of their liberty, including failure to register all detainees immediately upon apprehension; the lack of access to a lawyer of their choice; the lack of a medical examination immediately after their apprehension and the lack of access to medical assistance (arts. 9 and 14).

The State party should ensure registration of all detainees immediately following their apprehension in the central register, a medical examination and access to a lawyer of their choice as well as access to medical assistance.

Conditions of detention

17. The Committee is concerned about extremely harsh conditions in places of deprivation of liberty, including overcrowding, lack of hygiene and insufficient food and drinking water (art. 10).

The State party should strengthen its efforts to improve conditions of detention to bring them into line with the provisions of article 10 of the Covenant.

Independence of the judiciary

18. While welcoming efforts aimed at strengthening the judiciary, the Committee is concerned about the lack of full independence of the judiciary, including in the process of the selection and dismissal of judges; potential influence of the executive power on the Council for the Selection of Judges and reports of corruption in the judiciary (art. 14).

The State party should pursue judicial reforms to ensure a fully independent and impartial judiciary, including the establishment of objective and transparent criteria for the selection and dismissal of judges in accordance with international standards, notably the Basic Principles on the Independence of the Judiciary (1985).

Elders' court

19. The Committee remains concerned that the functioning of the Elders' (*aksakals*) courts may jeopardize the right to fair trial, in particular due to the fact that decisions are taken by persons who do not have legal knowledge, on the basis of cultural and moral norms, and that decisions in family matters may adversely affect women (arts. 2, 3 and 14).

The State party should ensure that the Elders' courts function in full compliance with provisions of the Covenant, in particular the safeguard of fair trial guarantees and non-discrimination, and that their members are provided with training on the rights protected under the Covenant.

Military courts

20. The Committee is concerned that military courts continue to exercise jurisdiction in criminal cases where military personnel and civilians are jointly accused (art. 14).

The State party should without further delay remove the power to exercise jurisdiction over civilians from military courts.

Corporal punishment

21. While noting that violence against children and corporal punishment is legally prohibited in schools and some institutional settings, the Committee remains concerned that corporal punishment continues, especially in the home, where it is traditionally accepted and practised as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

Freedom of conscience and religious belief

22. While noting the planned amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic, the Committee is concerned about the restrictions in the current law that are incompatible with provisions of the Covenant, including with respect to missionary activities, the registration procedure and dissemination of religious literature. The Committee is also concerned about reports of religious intolerance with respect to converts from the majority religion, including incidents of hate speech (arts. 18, 19, 26 and 27).

The State party should ensure that the legislative amendments to the 2008 Law on Freedom of Conscience and Religious Organizations in the Kyrgyz Republic remove all restrictions that are incompatible with article 18 of the Covenant, by providing for

a transparent, open and fair registration process for religious organizations and eliminating distinctions among religions that may lead to discrimination. The State party should take measures, including through public statements and awareness-raising campaigns, to promote religious tolerance and condemn any act of religious intolerance and hatred. The State party should also investigate all cases of violence based on religion, prosecute perpetrators and compensate victims.

The right to conscientious objection

23. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para. 18) about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and the stipulation of a shorter period of military and alternative service for persons with higher education. The Committee notes the State party's initiative to amend the Law on Universal Conscription of Citizens of the Kyrgyz Republic on Military and Alternative Service (arts. 2, 18 and 26).

The State party should ensure that amendments to the Law on Universal Conscription of Citizens of the Kyrgyz Republic, on Military and Alternative Service provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. It should also stipulate periods of military and alternative service on a non-discriminatory basis.

Freedom of expression

24. The Committee expresses concern at reports of persecution of human rights defenders, journalists and other individuals for expressing their opinion, in particular opinions that are critical of State institutions in relation to the June 2010 events. The Committee is also concerned about reports of pressure on individuals and organizations that have provided information to the Committee (art. 19).

The State party should ensure that journalists, human rights defenders and other individuals are able to freely exercise their right to freedom of expression, in accordance with article 19 of the Covenant and the Committee's general comment no. 34 (2011) on the freedoms of opinion and expression. Furthermore, the State party should ensure that threats, intimidation and violence against human rights defenders and journalists are investigated, that perpetrators are prosecuted and punished, if convicted, and that victims are provided with compensation. The State party should ensure that all individuals or organizations can freely provide information to the Committee and should protect them against any reprisals for providing such information.

Freedom of association

25. The Committee notes reports of possible restrictions on non-governmental organizations in several legislative proposals, including restrictive reporting obligations to State authorities in the draft bill on Fighting against Legalization (Laundering) of Criminal Revenue and Financing Terrorist or Extremist Activity (art. 2, 22 and 26).

The State party should ensure freedom of association, in accordance with article 22 of the Covenant, and refrain from imposing disproportionate or discriminatory restrictions on the freedom of association.

Birth registration

26. The Committee is concerned at the absence of a birth registration system for newborns in the provinces of Osh and Jalal-Abad, as well as at the difficulties encountered by women who do not have a passport in registering their newborn children (art. 24).

The State party should ensure that every child is registered immediately after birth, and take measures, including awareness-raising, to facilitate the registration process with regard to children of parents who may have particular difficulties providing the necessary identification documents.

Minority rights

27. While noting the State party's efforts to integrate minorities into political and public life, the Committee remains concerned about the low level of representation of minorities in political and public institutions, at both the national and local levels. The Committee is concerned at reports that several schools have changed the language of instruction from the minority language to Kyrgyz, and that some of the Uzbek-language media were closed, including two independent Osh-based Uzbek-language television stations, Mezon TV and Osh TV, following the June 2010 events (art. 27).

The State party should strengthen its efforts to ensure representation of minorities in political and public bodies at all levels, including the judiciary and law enforcement, to facilitate education in minority languages for children belonging to minority ethnic groups and promote the use of minority languages in the media, including by restoring Uzbek-language television stations.

Dissemination of information relating to the Covenant and the Optional Protocols

28. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of its second periodic report, the written replies to the list of issues drawn up by the Committee, and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party (art. 2).

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 14, 15 and 24 above.

30. The Committee requests the State party to provide in its next periodic report, due to be submitted on 28 March 2018, specific, up-to-date information on all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult with civil society and non-governmental organizations operating in the country.